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BEFORE THE ARIZONA CORPORATION COMMISSION**COMMISSIONERS**

SUSAN BITTER SMITH - Chairman
 BOB STUMP
 BOB BURNS
 DOUG LITTLE
 TOM FORESE

Arizona Corporation Commission

DOCKETED

NOV 25 2015



IN THE MATTER OF THE APPLICATION OF
 THE ARIZONA DEPARTMENT OF
 TRANSPORTATION TO UPGRADE AN
 EXISTING CROSSING OF THE UNION PACIFIC
 RAILROAD AT PRODUCE ROW IN THE CITY
 OF NOGALES, SANTA CRUZ COUNTY,
 ARIZONA, USDOT NO. 742-034T.

DOCKET NO. RR-03639A-15-0146

DECISION NO. 75336**OPINION AND ORDER**

DATE OF HEARING:	August 4, 2015
PLACE OF HEARING:	Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE:	Marc E. Stern
APPEARANCES:	Mr. James Redpath and Michelle Burton, Assistant Attorneys General, Transportation Section, on behalf of the Arizona Department of Transportation;
	Mr. W. Reed Campbell, Beaugureau, Hancock, Stoll & Schwartz, P.C., on behalf of the Union Pacific Railroad; and
	Mr. Charles Haines, Staff Attorney, Legal Division on behalf of the Safety Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On May 8, 2015, the Arizona Department of Transportation ("ADOT") filed with the Arizona Corporation Commission ("Commission") an application for approval for the Union Pacific Railroad ("Railroad") to upgrade an existing crossing at Produce Row in the City of Nogales ("City"), Santa Cruz County, Arizona, at USDOT No. 742-034T ("Application").

On May 26, 2015, by Procedural Order, a hearing was scheduled for August 4, 2015.

On June 9 and 23, 2015, ADOT filed documentation that it had provided public notice in accordance with the Commission's Procedural Order.

On August 4, 2015, a full public hearing was convened before a duly authorized

1 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. ADOT, the
2 Railroad and the Commission's Safety Division, Railroad Safety Section ("Staff") were present with
3 counsel. At the conclusion of the hearing, the matter was taken under advisement pending
4 submission of a Recommended Opinion and Order to the Commission.

5 * * * * *

6 Having considered the entire record herein and being fully advised in the premises, the
7 Commission finds, concludes, and orders that:

8 **FINDINGS OF FACT**

9 1. On May 8, 2015, ADOT filed an Application requesting an Opinion and Order from
10 the Commission approving an agreement between ADOT and the Railroad to upgrade an existing at-
11 grade crossing at Produce Row in Nogales, Santa Cruz County, Arizona, USDOT No. 742-034T.

12 2. Prior to the filing of the Application, representatives of ADOT, the City, the Railroad
13 and Staff participated in several diagnostic review meetings of the proposed upgrades for the
14 crossing. All parties who were present at these meetings were in agreement that the proposed
15 enhancements would improve safety at the crossing.¹

16 3. ADOT is seeking Commission approval to upgrade the existing at-grade crossing at
17 Produce Row, a two lane paved roadway, which consists of one eastbound and one westbound lane
18 with a shared turning lane. The proposed improvements will replace the existing automatic warning
19 devices with two new automatic gates with LED flashing lights on both sides of the roadway, and add
20 advanced traffic preemption to interconnect with the Railroad's equipment and traffic signals. The
21 Railroad will maintain the warning devices and the crossing after the upgrades are completed.

22 4. On June 9 and 23, 2015, ADOT filed documentation that it had provided public notice
23 of the Application and hearing thereon, pursuant to the Commission's Procedural Order, by
24 publishing notice in the *Nogales International* and by mailing by certified U.S. mail, notice to the
25 City and the Railroad.

26 ¹ The proposed upgrade of the Produce Row crossing was approved by the Commission in Decision No. 73610
27 (December 12, 2012) as part of the 2012 Annual Array to utilize federal funding pursuant to 23 U.S.C. § 130 ("Section
28 130") which is provided by the Federal Highway Administration ("FHWA") to reimburse ADOT for 100 percent of the
cost of the project. Section 130 projects are used to eliminate hazards to pedestrians and highway vehicles at public
railroad crossings which are not primarily for the benefit of the Railroad.

1 5. The hearing was held as scheduled on August 4, 2015.

2 6. According to the Staff Memorandum, the areas adjacent to the Produce Row at-grade
3 crossing consist primarily of land which is zoned for light industrial uses.

4 7. Mr. Jason Pike, a Railroad and Utility Coordinator for ADOT, testified in support of
5 the Application.

6 8. According Mr. Pike, the project involves typical at-grade crossing improvements with
7 upgrades to the gates and automatic traffic preemption devices at the Produce Row crossing which is
8 located east of State Route 19B in the City.

9 9. Mr. Pike stated that the existing gates will be replaced with new gates with flashing
10 LED lights. (Tr. 6:3-8)

11 10. Mr. Pike testified that ADOT is in agreement with the recommendations of Staff in its
12 memorandum. (Tr. 7:9-12)

13 11. Mr. Pike further testified that ADOT is also in agreement with Staff with respect to the
14 fact that grade separation is not required at the Produce Row crossing, according to the nine criteria
15 set forth in the Federal Highway Administration Grade Crossing Handbook. (Tr. 6:9-14)

16 12. Mr. Pike stated that the City will maintain the roadway approaches to the Produce
17 Row at-grade crossing, and the crossing surface and warning devices will be maintained by the
18 Railroad. (Tr. 10:1-10)

19 13. Mr. Pike stated that ADOT anticipates construction of the upgrade to be completed
20 within 12 months of the Commission's approval of the Application. (Tr. 8:20-24)

21 14. According to Mr. Pike, the upgrades to be installed at the Produce Row at-grade
22 crossing are in the public interest and will be consistent with similar crossings in Arizona. (Tr. 9:1-
23 25)

24 15. Mr. Brian Lehman, the Supervisor of the Commission's Railroad Safety Section for
25 the Commission, testified that he had prepared the Staff Memorandum which describes the nature of
26 ADOT's proposed improvements at the Produce Row crossing. (Tr. 12:10-18)

1 16. According to Mr. Lehman, Staff believes that the improvements which will be made to
2 the Produce Row crossing are in the public interest and consistent with improvements which have
3 been made to similar crossings within Arizona. (Tr. 13:18-24)

4 17. Mr. Lehman further testified that the improvements will be made with all new
5 equipment to the Produce Row at-grade crossing. (Tr. 15:1-7)

6 18. Mr. Lehman stated that the upgrades at the Produce Row at-grade crossing will
7 improve the flow of traffic for emergency vehicle traffic at the crossing. (Tr. 16:3-12)

8 19. Mr. Lehman indicated that Staff does not believe that the Produce Row crossing
9 requires grade separation and further stated that it would be a multi-million dollar project if the
10 Produce Row crossing were grade separated. (Tr. 16:12-22)

11 20. Staff is recommending that the Application be approved.

12 **CONCLUSIONS OF LAW**

13 1. The Commission has jurisdiction over the parties and over the subject matter of the
14 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and
15 40-337.01.

16 2. Notice of the Application was provided in accordance with the law.

17 3. The installation of the crossing upgrade is necessary for the public's convenience and
18 safety.

19 4. Pursuant to A.R.S. §§ 40-336 and 40-337, the Application should be approved as
20 recommended by Staff.

21 5. After the installation of the improvements at the Produce Row at-grade crossing, the
22 Railroad should maintain the crossing in accordance with A.A.C. R14-5-104.

23 **ORDER**

24 IT IS THEREFORE ORDERED that the Arizona Department of Transportation's
25 Application, as described herein, is hereby approved.

26 IT IS FURTHER ORDERED that the Union Pacific Railroad shall complete the crossing
27 upgrade as described in the Application within fifteen months of the effective date of this Decision.

28 IT IS FURTHER ORDERED that the Union Pacific Railroad shall notify the Commission, in

1 writing, within ten days of both the commencement and completion of the crossing upgrade, pursuant
2 to A.A.C. R14-5-104.

3 IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Union Pacific
4 Railroad shall maintain the crossing in compliance with A.A.C. R14-5-104.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

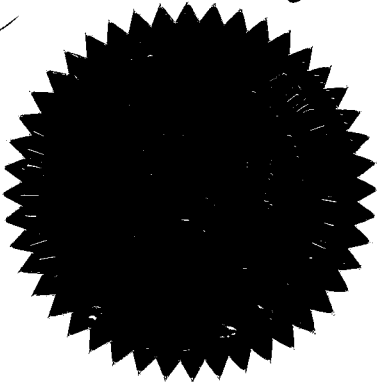
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9 CHAIRMAN

COMMISSIONER

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COMMISSIONER

COMMISSIONER



12 IN WITNESS WHEREOF, I, JODI JERICH, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this 25th day of November 2015.

17 JODI JERICH
18 EXECUTIVE DIRECTOR

19 DISSENT _____

20 DISSENT _____
21 MES:tv(ru)

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